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January 8, 2007

218386

VIA HAND-DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W. Room 711
Washington, D.C. 20423-0001

RE: STB Finance Docket No. 34974, *Keokuk Junction Railway Co. d/b/a Peoria & Western Railway – Lease and Operation Exemption – BNSF Railway Company between Vermont and Farmington, Illinois*

Dear Secretary Williams:

Enclosed for filing are the original and ten copies of the PUBLIC version of Ameren Energy Fuels and Services Company's "Reply to Keokuk Junction Railway Co.'s Petition for Exemption" for filing in the above captioned proceeding. **Exhibit A contains COLOR.** We have enclosed three discs which each contain a copy of the PUBLIC version in Adobe Acrobat format in accordance with 49 C.F.R. § 1104.3.

Also enclosed are the original and ten copies of the HIGHLY CONFIDENTIAL version of Ameren Energy Fuels and Services Company's "Reply to Keokuk Junction Railway Co.'s Petition for Exemption" for filing under seal pursuant to the Protective Order in the above captioned proceeding. **Exhibit A contains COLOR.** This sealed packet also includes three discs containing a copy of the HIGHLY CONFIDENTIAL version in Microsoft Word format.

In addition, we have enclosed an extra copy of all the documents, including both the HIGHLY CONFIDENTIAL and PUBLIC version. Kindly indicate receipt and filing by time-stamping these copies and returning it to the bearer of these documents.

Please feel free to contact me if you have any questions.

Very truly yours,

Sandra L. Brown

Sandra L. Brown

Enclosures

cc: William A. Mullins
Rodney Heinze
Honorable Ray Lahood
Adrian L. Steel, Jr.

PUBLIC VERSION – [Bracketed Material is Redacted]
CONTAINS COLOR

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34974

KEOKUK JUNCTION RAILWAY CO. d/b/a PEORIA & WESTERN RAILWAY – LEASE AND OPERATION EXEMPTION – BNSF RAILWAY COMPANY BETWEEN VERMONT and FARMINGTON, ILLINOIS

AMEREN ENERGY FUELS AND SERVICES COMPANY
REPLY TO PETITION FOR EXEMPTION

ENTERED
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Public Record

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January 8, 2007

PUBLIC VERSION
[Bracketed Material is Redacted]

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34974

KEOKUK JUNCTION RAILWAY CO. d/b/a PEORIA & WESTERN RAILWAY – LEASE AND OPERATION EXEMPTION – BNSF RAILWAY COMPANY BETWEEN VERMONT and FARMINGTON, ILLINOIS

AMEREN ENERGY FUELS AND SERVICES COMPANY REPLY TO PETITION FOR EXEMPTION

Ameren Energy Fuels and Services Company ("AFS"), hereby files this Reply ("Reply") pursuant to 49 C.F.R. § 1104.13, and as permitted pursuant to the Surface Transportation Board's ("STB or Board") December 20, 2006 Decision, to Keokuk Junction Railway Co. ("KJRY")'s[1] Petition for Exemption in Finance Docket No. 34974, *Keokuk Junction Railway Co. d/b/a Peoria & Western Railway—Lease and Operation Exemption—BNSF Railway Company* ("Petition" or "Lease Transaction"). As the Board is aware, the Lease Transaction contemplated in this proceeding is identical to the transaction that is currently held in abeyance under a housekeeping stay in Finance Docket No. 34918, *Keokuk Junction Railway Co. d/b/a Peoria & Western Railway—Lease and Operation Exemption—BNSF Railway Company* ("Notice"). Specifically, KJRY is attempting "to lease and operate" a 42.1 mile rail line owned by the BNSF Railway Company ("BNSF") which runs between Vermont (Milepost 94.3) and Farmington (Milepost 52.3), Illinois in Fulton County, Illinois (the "Vermont Line" or "Line"). (*See* Map attached hereto as Exhibit A.) The proposed Lease Transaction will result in a diminution of

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[1] Ameren only refers to KJRY since KJRY has dispensed with the PWRY acronym. KJRY Petition at 2, n1.

rail-to-rail competition to Ameren, as well as to alleged other potential shippers on the Line. Neither KJRY's Petition nor BNSF's Comments filed on December 27, 2006[2] demonstrate that competition will not be diminished as a result of this transaction, or mitigate the competitive harm. Thus, the Lease should not be permitted and the Petition must be denied.

PROCEDURAL BACKGROUND

On August 4, 2006 in Finance Docket No. 34918, KJRY filed a verified notice of exemption to lease and operate the Vermont Line. Deeply concerned about the implications of the transaction, on August 10, 2006, Ameren filed a Motion to Hold the Notice in Abeyance and a Motion for Protective Order to cover the discovery of the Lease requested by Ameren. The Board issued a housekeeping stay on August 10, 2006 and imposed the Protective Order on August 25, 2006. On September 21, 2006, Ameren filed a Motion to Compel Discovery in order to gain access to substantial portions of the lease agreement. On October 13, 2006, nearly two months after receiving Ameren's discovery, KJRY finally produced most of the previously redacted portions of the lease, albeit still with redactions and exhibits missing. The Notice proceeding in Finance Docket No. 34918 remains under a housekeeping stay. KJRY has requested that the Board either proceed with the Notice proceeding and allow the transaction to be consummated or proceed with the Petition filed in this Docket. The Notice is inappropriate and the Petition obviates the need for the Notice proceeding and thus Finance Docket No. 34918 should be dismissed as moot.

The Board granted Ameren's request for an extension of time on December 20, 2006 and provided that Ameren's Reply would be due January 8, 2006. The previous day, on December

[2] Comments of BNSF Railway, STB Finance Docket No. 34974 (STB received Dec. 27, 2006) ("BNSF Comments").

19, 2006, the Board issued the Protective Order with certain appropriate modifications. Over four months after KJRY first filed its Notice and Ameren requested the lease through discovery, KJRY has finally produced the full un-redacted lease agreement subject to the Protective Order (hereinafter "Lease" will be used to refer to the proposed KJRY-BNSF Lease produced in Exhibit F to the Petition).[3] Ameren's outside counsel and outside consultant have finally had a chance to review the full unredacted Lease contained in KJRY's Highly Confidential version of its Petition for Exemption and now Ameren makes its timely Reply to KJRY's Petition. BNSF filed Comments on December 27 in this proceeding. Ameren's Reply also responds to BNSF Comments.

FACTUAL BACKGROUND

As described in the attached Joint Verified Statement of Robert K. Neff and Glennon P. Hof ("J.V.S. Neff/Hof") Exhibit B, AFS is a subsidiary of Ameren Corporation. Ameren Corporation through its utility operating subsidiaries provides electricity to 2.3 million customers in Missouri and Illinois. AFS is responsible for the procurement of coal supply, including the acquisition of related transportation, for all of Ameren Corporation's utility operating subsidiaries. Ameren Energy Generating Company ("AERG"), one of Ameren Corporation's non-regulated generation subsidiaries, owns the Duck Creek Power Plant ("Duck Creek" or

[3] KJRY told Ameren that KJRY's resistance to producing the Lease was because BNSF would not let KJRY produce it to Ameren. This apparently also led to the piecemeal production which kept Ameren's counsel from seeing the whole lease until after the Board issued the Protective Order in this proceeding. The repeated delay seems strange to Ameren especially since KJRY argues that the Lease terms are its strongest support for KJRY's argument that there is no competitive harm to Ameren. Of course, as discussed below, KJRY's argument only addresses half of the issue since KJRY substantially ignores the impact of the Lease to the current independent KJRY/UP movement. In addition, as shown in the attached Verified Statement of Joseph J. Plaistow, Exhibit C, KJRY had every reason to continue to delay producing the full lease agreement since the per carload rate [ ] and supports the anti-competitive nature of the transaction.

"Duck Creek plant") which is located along the Vermont Line. (Ameren Corporation and its subsidiaries are hereinafter collectively referred to as "Ameren" unless further distinction is necessary.) J.V.S. Neff/Hof at 1.

Ameren acquired the Duck Creek plant in 2003. At that time Duck Creek was captive for rail service via the BNSF which served the plant via Ameren's private track that connects to the Vermont Line at Milepost 67.28 which is approximately .58 miles south of Dunfermline (Milepost 66.7) and approximately five miles south of the Vermont Line's intersection of the KJRY east-west line at Canton, Illinois.[4] See Exhibit A. The portion of the Vermont Line used for the Duck Creek service is approximately 26 miles of the approximately 42 miles that BNSF proposes to lease to KJRY in this proceeding. Ameren understands that the Duck Creek coal traffic was the only traffic that moved on the Vermont Line between the time of its acquisition of the Duck Creek plant and the end of 2005. J.V.S. Neff/Hof at 2-3. BNSF concurs that there were no other shippers using the Line. BNSF Comments at 2-3. In fact, as stated in BNSF's Comments the line north of Dunfermline is out-of-service. BNSF Comments at 3.

As the Board is aware and has encouraged, Ameren has aggressively sought to establish competitive transportation alternatives at all of its rail-served coal-fired plants via shipper-made infrastructure investments. In order to achieve this goal, Ameren has invested its own capital to build and purchase rail lines and Ameren has made significant investments in rail infrastructure and equipment in order to expand competitive railroad options at its coal-fired plants. In keeping with Ameren's goal for competitive service at all of its plants, in 2005 Ameren constructed a

[4] KJRY obtained the LaHarpe to Hollis line in the STB Finance Docket No. 34335, *Keokuk Junction Railway Co.—Feeder Line Acquisition—Line of Toledo Peoria and Western Railway Corporation Between La Harpe and Hollis, IL,* (STB served Feb. 7, 2005) proceeding ("KJRY east-west line").

new private track extending from the Duck Creek plant to a point of connection with KJRY east of Canton, Illinois.[5] J.V.S Neff/Hof at 3 and Exhibit A. This track was constructed in order to establish competitive access for Duck Creek to the Union Pacific Railroad ("UP") via KJRY's connection to UP at Hollis. In February 2006, the first coal trains were delivered to Duck Creek via the KJRY/UP routing.[6] Thus, as a result of Ameren's expenditure of capital to construct the private line, Ameren currently has two separate and independent rail routes at Duck Creek – direct BNSF route and the KJRY/UP route. J.V.S. Neff/Hof at 3.

Ameren has been supportive of KJRY in the past and hopes to continue supporting KJRY in its efforts to expand rail traffic in the Canton area which would help keep KJRY's east-west line viable. However, Ameren cannot permit KJRY and BNSF to take actions that would result in a diminution of competition at Duck Creek which harms the competitiveness and potential viability of the Duck Creek plant or to use the Lease as a means to provide guaranteed income on all of Duck Creek's traffic. J.V.S. Neff/Hof at 3-4.

SUMMARY OF ARGUMENT

From the outset and continuing through its Petition, KJRY has presented the Lease transaction to the Board in a misleading, incomplete, and disingenuous manner in order to avoid a candid discussion of its manifestly anticompetitive implications. However, KJRY's tactics

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[5] It is not clear what KJRY's intent is when it states that Ameren completed its separate spur track to the KJRY "without Board authority," *see* Petition at 4. Rightfully so since it is well established that not all shipper rail construction requires Board authority. *See* STB Finance Docket No. 34013, *B. Willis C.P.A., Inc.—Petition for Declaratory Order* (STB served Oct. 3, 2001). Out of caution and consistent with the *Willis* precedent, Ameren makes clear for the record that Ameren did not and does not have the intention of holding its spur track that connects to KJRY's east-west line out for use by any other shipper.

[6] Ameren has separate agreements and separate billing arrangements with KJRY and UP for this new rail routing to Duck Creek. J.V.S. Neff/Hof at 3.

cannot disguise the paramount issue in this proceeding: whether the Petition adheres to the standards of 49 U.S.C. § 10502.

As shown below, the transaction does not satisfy the Board's statutory standards. KJRY's Petition only addresses half of the competitive picture at Duck Creek. KJRY's Petition fails to fully recognize or address the harm to the current independent KJRY/UP routing that Duck Creek has achieved through its investment. The diminution in competition will occur because of the vertical dis-integration which will place KJRY into both movements and because KJRY has established a guaranteed rate floor for the UP routing based upon the per carload rate set in the Lease with BNSF. This diminution in the competitive environment at Duck Creek cannot be permitted under the Board's statute and regulations.

KJRY's claimed benefits to the potential Canton shippers will be shown to be unsubstantiated and in fact, those industries will also be competitively harmed in a manner similar to Ameren if this transaction was approved. It has not been shown that the proposed ethanol plant, owned by Central Illinois Energy Cooperative, Inc. ("CIE"), will benefit from this transaction and will in fact actually diminish competition.[7] The real cause of the proposed ethanol plant's problems appears to be that <u>BNSF has refused to provide service to CIE's plant</u>. *See* CIE letter in Exhibit C of Petition.

Contrary to the picture that KJRY has attempted to paint, Ameren tried to settle this matter amicably with KJRY. In addition, Ameren remains willing to consider a reasonable settlement that will not diminish competition or cause Ameren's rates to increase. Despite its claims, KJRY has not made an offer that would preserve the competitive landscape that Ameren

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[7] As shown in Exhibit A, the ethanol plant is proposed to be constructed adjacent to the Ameren-owned spur track to the Duck Creek plant.

enjoys today. Ameren has legitimate competitive concerns regarding the transaction proposed under the Lease as established in Part I of this Reply and as discussed in the attached Verified Statement of Ameren's expert witness, Joseph J. Plaistow of L. E. Peabody & Associates, Exhibit C ("V.S. Plaistow"). Part II of this Reply clarifies some additional facts and circumstances that have been misstated or omitted by KJRY and BNSF. While Ameren believes these misstatements or omissions are not relevant to the legal issues in this proceeding, Ameren clarifies the record in case such clarification would be helpful to the Board.

ARGUMENT

I. THE LEASE TRANSACTION DOES NOT SATISFY THE STANDARDS OF 49 U.S.C. § 10502

A. The Lease Transaction is Fundamentally Anticompetitive

Ameren strongly disagrees with KJRY's assertion that the Lease Transaction adheres to the legal standard at 49 U.S.C. § 10502 and otherwise advances the public interest. In order to arrive at these conclusions, KJRY disingenuously ignores the incontrovertible fact that the transaction is fundamentally anticompetitive. It will deprive Ameren of its existing ability to choose between the two independent competitive routings for the transportation of coal to Duck Creek and will transfer control over the traffic to KJRY. Thus, it will destroy the competitive market for rail services at the facility. Ameren also strongly rejects KJRY's straw man argument that purported benefits arising from speculative future traffic outweigh the anticompetitive harm that Ameren's current traffic will suffer. The Verified Statement of Mr. Plaistow further supports the discussion in this Reply, and, in particular, responds to the Verified Statement of KJRY's expert witness, Dr. William J. Brennan (respectively "V.S. Brennan" and "Dr. Brennan").

Presently, Ameren reaps the benefits of a competitive rail market at Duck Creek, in which KJRY and UP compete against BNSF for the right to serve the facility. Competition naturally disciplines the service providers, allowing Ameren to select the rate and terms that best fulfill its requirements. In particular, the competitive market brings the risk that KJRY might lose Ameren's traffic to BNSF, by overpricing its portion of the UP/KJRY routing. Thus, the current market gives KJRY a strong incentive to establish a competitive rate for its portion of the movement with UP. V.S. Plaistow at 3.

The Lease Transaction will upset the competitive balance by eliminating this crucial incentive. After the transaction becomes effective, KJRY will derive revenue from the Duck Creek traffic <u>regardless</u> of its rate (and the overall competitiveness of the UP/KJRY movement). As such, KJRY will gain ultimate control over the Duck Creek traffic. Anticipating the removal of the risk that KJRY could lose the traffic, KJRY agreed [ ] with BNSF that will which essentially establish [ ] floor on the 17 mile KJRY portion of the UP movement. The Lease Transaction also allows KJRY to eliminate UP altogether, forcing Ameren into the new BNSF/KJRY routing.[8] Thus, the Lease effectively strips Ameren of control over its own traffic, transfers ultimate power to KJRY, and diminishes rail-to-rail competition at Duck Creek. Of course, it also renders substantially worthless Ameren's significant investment in its newly-constructed rail spur. V.S. Plaistow at 3-4. As more fully explained below, for these reasons the Lease Transaction contravenes both the Rail

[8] [ ]

Transportation Policy ("RTP") and the public interest, and none of the purported benefits identified by KJRY disguise or mitigate this fatal defect.

B. The Lease Transaction Subverts Every Prong of 49 U.S.C. § 10502

1. The Transaction Does Not Advance the RTP

The Board should deny KJRY's petition because the transaction fails to satisfy the first prong of 49 U.S.C. § 10502. Simply put, the transaction contravenes numerous provisions of the RTP, codified at 49 U.S.C. § 10101, because it will eliminate existing rail-to-rail competition and fundamentally deprive Ameren of control over its own Duck Creek traffic. Additionally, KJRY fails to show that the transaction otherwise brings tangible public benefits consonant with the RTP. Indeed, purported advantages to other shippers, railroads, and the public are speculative, at best, and entirely unsupported by the various exhibits that KJRY attaches to its Petition, including the Verified Statement of Dr. Brennan.

a. The Lease Transaction Contravenes the RTP with regard to Duck Creek

With regard to Ameren, the Lease Transaction manifestly subverts the RTP. The transaction violates at least six components, including 49 U.S.C. §§ 10101(1), (2), (4), (5), (9) and (12), as demonstrated below:

- 49 U.S.C. § 10101(1). Because the transaction diminishes existing competition at Duck Creek and effectively destroys Ameren's choice in selecting service to the facility, the transaction manifestly prevents competition and the demand for services from establishing rates for transportation by rail.
- 49 U.S.C. § 10101(2). The elimination of Ameren's control over the selection of its service provider at Duck Creek virtually ensures that federal regulatory control will be required to maintain rate and service discipline that the competitive rail market currently provides.

- 49 U.S.C. § 10101(4). The Lease Transaction does not ensure the development and continuation of a sound rail transportation system with effective competition among carriers. Rather, it retards this aspect of the RTP because it effectively eliminates the competitive access that Ameren assiduously established at Duck Creek and deprives Ameren of the value of its substantial investment in its spur to KJRY's east-west line.
- 49 U.S.C. § 10101(5). Similarly, by placing ultimate control over Ameren's Duck Creek traffic in KJRY's hands, the transaction does not foster sound economic conditions in transportation and ensure effective competition. The transaction disrupts market forces that presently exist because of dual access between BNSF on one hand, and UP/KJRY on the other, and substantially diminishes effective competition.
- 49 U.S.C. § 10101(9). Additionally, the Lease Transaction does not encourage honest and efficient management of railroads. On the contrary, the transaction invites KJRY to use its control over the Duck Creek traffic to extract a greater basis from the UP/KJRY move, than provided under its agreement with BNSF, or to shift the traffic to BNSF by pricing that route out of the market - all to the detriment of Ameren.
- 49 U.S.C. § 10101(12). Finally, because the transaction gives KJRY ultimate control over the Duck Creek traffic, it fosters predatory pricing and practices, undue concentration of market power, and unlawful discrimination that vigorous competition otherwise prevents.

b. The Lease Transaction Defeats the RTP with respect to Other Shippers

KJRY utterly fails to substantiate its claim that it will advance the RTP by providing new service to industries located along the Line. Indeed, the letters prepared by Hitchcock Scrap Yard, Inc. ("Hitchcock"), and United Paving and Construction Co. ("United") actually cast doubt on this claim. See Petition, Exhibits D and E. The letters reveal that each shipper presently enjoys alternative rail access only "a few miles" away via a transloading facility, but that neither currently ships by rail. Seemingly, a savvy and customer-oriented short line serving that transloading facility would have worked with both shippers to re-establish their rail access. In fact, the short line serving the facility is none other than KJRY, and its failure to attract any business from Hitchcock and United seriously calls into question the customer-friendly service that it promises to provide over the Line in furtherance of the RTP, especially considering KJRY's predictions of moving 1,100 cars annually from these two shippers. Indeed, by claiming that it "discovered" Hitchcock and United, KJRY purports to demonstrate its dynamism in developing business on the Line. Petition at 10. In fact, KJRY has known about these shippers for at least two years, since its feeder line acquisition in STB Finance Docket No. 34335, *Keokuk Junction Railway Co.—Feeder Line Acquisition—Toledo, Peoria & Western Railway Corp. between LaHarpe and Hollis, IL*, Slip. Op. 5-7 (STB served Oct. 28, 2004) (mentioning both Hitchcock and United by name as potential shippers on the east-west line).

In this vein, it is important to note that both Hitchcock and United presently have access to two rail carriers, BNSF (directly) and KJRY via transloading only "a few miles" away. This fact remains true despite the fact that it appears that BNSF has not pursued the traffic. It is very likely that KJRY did not explain to these industries the competitive benefits of a different Class III carrier than KJRY leasing the Line. However, if the transaction was approved then these industries will also become captive to the KRJY. Any leverage they had over KJRY will disappear - a point that KJRY also likely failed to explain when it sought their letters of support. V.S. Plaistow at 12. This elimination of competition will contravene the RTP, just like the destruction of rail-to-rail competition at Duck Creek.

It is simply impossible to credit KJRY's conclusory assertions that its new operations over the Line will advance the RTP as to Hitchcock and United. The letters of support provide no information about any guarantee of traffic that would move traffic over the Line, and KJRY itself offers no such information about the economies of its potential service. Furthermore, KJRY's admission in its Petition [

] V.S. Brennan at 9. For purposes of applying the first prong of 49 U.S.C. § 10502, the Board should reject KJRY's baseless attempt to conceal the harm to Ameren by trumpeting empty benefits to these shippers.

c. The Lease Transaction Contravenes the RTP with respect to CIE

KJRY's vague representations about its potential service to CIE's ethanol plant similarly fail to justify its claim that the Lease Transaction will advance the RTP. KJRY's best argument amounts to inchoate rumblings about CIE's convenience (as opposed to competition) that are simply devoid of substance. The following is clear: The ethanol plant is being constructed next to the same private rail spur that presently connects Duck Creek to the BNSF Line, in other words to BNSF. J.V.S. Neff/Hof at 4 and Exhibit A. As such, CIE has an agreement with Ameren to use Ameren's private track to access BNSF, and CIE has an agreement with BNSF. Petition, Ex. C at 1. Nothing in the Lease Transaction remotely improves CIE's competitive position. Yet, CIE now claims that it is without rail access. However, any denial of rail access does not result from any action taken by Ameren. As the Board recognized, BNSF continues to have a common carrier obligation over the Line.[9] Furthermore, Ameren has continued to uphold the terms of its agreement with CIE. J.V.S. Neff/Hof at 4-5. It is difficult to understand how the

[9] STB Finance Docket No. 34974, *Keokuk Junction Railway Co d/b/a Peoria and Western Railway—Lease and Operation Exemption—BNSF Railway Co.*, (STB served Dec. 20, 2006) n. 1.

Lease Transaction substantially improves CIE's position in furtherance of the RTP, and KJRY's amorphous representations about convenience hardly make the case.

Moreover, KJRY's relationship with CIE is unclear. For example, the Petition is oddly vague about whether KJRY would actually handle any of CIE's traffic. CIE's letter of support indicates that the company already entered into an eight year "track agreement" with BNSF in January 2006 (presumably for transportation service to the plant). But, the letter says nothing about KJRY's role in that transaction. Petition, Ex. C at 1. In the Petition, KJRY does not clarify this matter: "[i]t is likely that some of the traffic to and from this new plant would originate or terminate on BNSF, and would therefore be transported over the Line." Petition at 10. Nor does KJRY explain how it will pass through purported efficiencies and cost savings to CIE, given what appears to be a separate agreement between BNSF and CIE. Accordingly, the Board should reject KJRY's representations that its potential service to CIE under the Lease Transaction advances the RTP, and otherwise, the public interest. Plainly, it does not.

2. The Transaction is Not Limited in Scope

KJRY wrongly argues that the Lease Transaction is limited in scope under 49 U.S.C. § 10502(a)(2)(A). In presenting its argument, KJRY improperly focuses on the length of the Line, and, in doing so, distorts the applicable legal standard. In fact, while the Board has considered the length of a line, it has consistently evaluated additional factors, such as: (1) whether a shipper opposes the transaction and the relationship between its traffic and the line[10]; (2) whether a

[10] *See* STB Docket Nos. AB-32 (Sub-No. 75X) and AB-355 (Sub-No. 20X), *Boston and Maine Corp.—Abandonment Exemption—In Hartford and New Have Counties, CT; Springfield Terminal Railroad Company—Discontinuance of Service Exemption—In Hartford and New Haven Counties, CT*, 1996 STB Lexis 361 at *12-13 (STB served Dec. 31, 1996).

shipper will lose access to rail service, or the transaction will change traffic patterns[11]; and (3) the greater geographic scope of the transaction.[12] Under a correct application of 49 U.S.C. § 10502(a)(2)(A), the Lease Transaction fails to pass muster.

In particular, because of Ameren's sustained and substantial opposition, the Lease Transaction is not limited in scope. Ameren has been the only current shipper on the Line, and its Duck Creek traffic is considerable: approximately 9,000 carloads per year, amounting to approximately one million tons of coal per year. J.V.S. Neff/Hof at 2. KJRY's Lease will destroy Ameren's ability to select the rail service provider for its own traffic and fundamentally alter the existing competitive balance. Accordingly, because of Ameren's sustained opposition, and the direct link between its traffic and the line, the transaction is not limited in scope, as the Board has applied 49 U.S.C. § 10502(a)(2)(A).

Moreover, the transaction is not limited in scope because it will disrupt Ameren's unfettered access to competing railroads. As explained above, if the Lease goes into effect, Ameren's competitive position will be diminished, and KJRY will gain ultimate control over the traffic to Duck Creek. Thus, Ameren will effectively lose its existing access to independent competitive rail service options. V.S. Plaistow at 3-4. As such, the transaction threatens to disrupt existing traffic patterns, since KJRY will have the power to shift the Duck Creek traffic to the BNSF routing.

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[11] STB Finance Docket No. 32754, *Livonia, Avon & Lakeville Railroad Corp.—Acquisition and Operation Exemption—Line of Consolidated Rail Corp.*, 1996 STB Lexis 72 at *9 (STB served Mar. 11, 1996).

[12] ICC Finance Docket No. 31532, *Indiana Hi-Rail Corp—Lease and Operation Exemption—Norfolk and Western Railway Co. Line between Douglas, OH and Van Buren, IN*, 1992 ICC Lexis 142 at *12 (STB served July 7, 1992).

Finally, in purely geographic terms, the transaction is not limited in scope. First, while the Line is only 42.1 miles long, it serves Ameren, a major rail shipper, and, potentially, at least three other shippers located near the line (as alleged by KJRY). Second, between Vermont at the southern end, and Farmington, at the northern end, the line connects directly with two Class I railroads, UP and BNSF, and one Class III railroad, KJRY. As such, it offers indirect connections to other major and short line carriers in the greater Chicago gateway region. By stating only the mileage of the line, KJRY improperly diminishes its significance within the surrounding transportation network, including Interstate 74 and the Illinois River, in order to convince the Board that the transaction is limited in scope. When the geographic scope of the transaction is brought to light, it is clear that this is not the case.

3. Regulation of the Transaction is Necessary to Protect Ameren from Abuse of Market Power

a. Ameren will Suffer Competitive Harm

As described above, Duck Creek presently enjoys the benefits of direct rail-to-rail competition between UP/KJRY to the north and BNSF to the south. Ameren brought competitive access to the facility by constructing, at substantial expense, an approximately five mile spur track to KJRY's east-west line. Thus, Ameren can presently put its traffic out for bid, and choose the rate and service terms that best meet its needs. In fact, Ameren did exactly this in 2005 for transportation beginning February 2006 via the increased rail transportation options created by Ameren's investment in its new spur track. The Lease Transaction, however, will undermine the benefit of Ameren's innovative, private sector initiative, and eliminate its existing ability to choose between effective competitors. J.V.S. Neff/Hof at 3.

Plainly, the Lease Transaction will upset the existing competitive balance at Duck Creek. Under the present transportation scenario, KJRY faces an immediate consequence for overpricing its services. If its proportional rate, in combination with UP's rate, makes the overall KJRY/UP rate non-competitive, it will lose the traffic and its share of any revenue from the traffic to BNSF. V.S. Plaistow at 3. The Lease Transaction eliminates this competitive pressure because it ensures that KJRY will handle the traffic and receive a share of the revenue, regardless of the level of the rate or service provided by KJRY. Thus, under the Lease, KJRY has agreed to a per carload rate with BNSF knowing that the rate will only be a floor for KJRY when pricing the KJRY portion of the UP movement. V.S. Plaistow at 3. Or alternatively, KJRY could price UP out of the market, and force all the traffic over BNSF. KJRY faces no consequences for shifting Ameren's traffic to the new BNSF/KJRY routing. Thus, the Lease Transaction effectively destroys the two independent competitive options that Ameren established at Duck Creek. Manifestly, the transaction exposes Ameren to abuse of market power. V.S. Plaistow at 4.

Additionally, if KJRY priced UP out the market by raising KJRY's portion of the movement, then, in doing so, it would re-establish Duck Creek's captivity to BNSF. By definition, this development would subject the facility to abuse of market power. V.S. Plaistow at 4-5. Accordingly, the Board must reject the Petition under 49 U.S.C. § 10502(a)(2)(B).

b. KJRY's Analysis of Class I – Class III Relations is Flawed

KJRY devotes considerable space in its Petition to a convoluted colloquy about its relationship with UP and BNSF in a strained effort to persuade the Board that it will not gain the power to control Duck Creek traffic and to eliminate rail-to-rail competition as a direct result of the Lease. Through Mr. Plaistow's Verified Statement Ameren responds to KJRY's quasi-theoretical arguments, including those of KJRY's expert. In this section, Ameren briefly rebuts the main points that KJRY raises in Section I-C of the Petition.

First, KJRY emphatically argues that the Lease Transaction "has changed nothing" because KJRY lacks "independent pricing authority" over the BNSF route. Petition at 15-16. This argument is incorrect, disingenuous, and incomplete because it glosses over KJRY's pricing power with respect to the UP/KJRY movement. Indeed, KJRY's retention of independent pricing power with UP is precisely the problem. V.S. Plaistow at 6-7. As explained above, the Lease will clearly give KJRY the power to price UP out of the market, and then, in the absence of effective rail-to-rail competition, KJRY might also be able to extract revenue concessions from BNSF as the bounty for making Duck Creek captive.[13] Thus, contrary to KJRY's representations, the transaction will radically change the competitive playing field, exposing Ameren to abuse of market power and increased rail rates. V.S. Plaistow at 6-7.

Second, KJRY's asserts that Ameren will suffer no harm from the transaction because "both BNSF and UP have a vested interest in ensuring that their respective abilities to compete are not encumbered by a terminating carrier that could exercise potentially arbitrary monopoly pricing on the terminating portion of a move." Petition at 16. This statement is inapposite because the key issues are power—specifically the power that KJRY will gain over the traffic to Duck Creek—and KJRY's own interest in maximizing its share of the revenue from the traffic. The statement's only value is KJRY's admission—unwitting for sure—of what is really at stake:

[13] There is no constraint on KJRY or BNSF that would limit their ability to alter the compensation terms of their agreement after the transaction receives STB authority. Such changes could be accomplished without returning to the Board, and thus could be hidden from the Board, Ameren, or other interested persons. In making this point, Ameren recognizes that KJRY (or BNSF) might seek STB approval of the transaction with a condition that any amendments be subject to STB oversight. Ameren rejects any such attempt since it would not resolve the competitive harm inherent in the transaction. Moreover, KJRY admits that it is negotiating other deals with BNSF, which could be used to provide other incentives, circumventing STB oversight. *See* Petition at 22. Further, as KJRY suggests in the Petition at 22, KJRY and BNSF could provide incentives elsewhere on their systems as the reward for returning Duck Creek to captivity.

arbitrary monopoly power. Otherwise, Ameren rejects KJRY's self-serving attempt to speak to the self-interest of BNSF and UP and how they will choose to pursue it.[14] Petition at 16.

Third, KJRY contends that it cannot price UP out of the market because "UP would not allow its overall through rate to be raised beyond what its competitor, BNSF, charges so as to lose the traffic." Petition at 18. This statement is wrong on its face, and KJRY's support is utterly fatuous. Presently, competitive forces, as opposed to UP, discipline KJRY's rate. After the Lease Transaction, the sky will be the limit for KJRY's upward adjustment because KJRY will no longer face losing the Duck Creek traffic and a share of the revenue. V.S. Plaistow at 3-4. In this scenario, UP's only recourse will be reducing its own division. But, at a certain level, UP's service will become uneconomic, and pushed beyond that point, UP will lose the traffic to BNSF (and KJRY). In a feeble attempt to bolster this point, KJRY contends that "collateral damage" inflicted by UP will also prevent it from exercising its new found market power. This argument does two things: First, it puts to lie KJRY's incorrect assertion that the Lease Transaction will not change the competitive landscape. KJRY clearly admits that it will gain substantial market power. Second, by pointing to speculative harms that might be inflicted somewhere on Pioneer Railcorp system, KJRY actually makes the admission that UP will be powerless within the Duck Creek market to stop an upward adjustment by KJRY. If UP retained any leverage at Duck Creek, at all, then such abusive tactics elsewhere would be unnecessary. In reality, this argument might be an indication of how KJRY intends to conduct its business. KJRY might attempt to extract other concessions from UP around the Pioneer Railcorp system as the price of admission at Duck Creek. Further, KJRY's statement intimates that KJRY would be

[14] Indeed, KJRY's gratuitous "you could bet the farm" hypothetical is absurd. Petition at 21. Ameren submits that if the only two major carriers in the West were to seek merger approval, then there would be far larger competitive issues than those facing the Duck Creek facility, and KJRY's service thereto.

looking to extract other concessions from elsewhere on BNSF's system or in other dealings with BNSF once KJRY succeeded in making Duck Creek captive to KJRY.

Fourth, KJRY's analysis of the transaction in light of past merger precedent is worthless sophistry that bears no relation to the facts of this proceeding. Indeed, KJRY's discourse is premised upon the situation in which a short line railroad connects a shipper to two Class I carriers. This scenario is emphatically the wrong starting point, since Ameren presently has direct access to BNSF and indirect access to UP, through KJRY - separate and independent rail-to-rail competition. Regardless of this key distinction, KJRY asserts that in the transportation scenario that will purportedly arise after the Lease Transaction "usually" the connecting short line "acts as a neutral carrier allowing the solely served shipper to take advantage of the competition between the two [Class I] carriers." Petition at 19. Again, this analysis is fundamentally flawed precisely because KJRY will gain the ability to price UP out of the market, thereby destroying existing competition that inures to Ameren's benefit. V.S. Plaistow at 6-7. Thus, KJRY's effort to disparage Ameren falls flat since neither the Board, nor its predecessor has ever held that the imperfect competition that may exist when a short line railroad serves as a bottleneck carrier is equal to, or as effective as the competition that exists by virtue of a shipper's access to two or more independent rail carrier routings. Thus, Ameren utterly rejects KJRY's premise underlying its competitive arguments.

Fifth, in another strained attempt to cloud the issues, KJRY grasps at precedents from mergers which took place in the 1990s. Petition at 19-21. However, when the Board issued its new rules governing mergers of major rail carriers, STB Ex Parte No. 582 (Sub-No. 1), *Major Rail Consolidation Procedures* (STB served June 11, 2001), it altered the legal standard by requiring major mergers to enhance, rather than to simply preserve existing competition: "We believe that offering some new or enhanced rail-to-rail competition or other competitive benefits is likely to be necessary. . . to tip the balance in favor of the public interest." STB Ex Parte No. 582, Slip Op. at 13. The transaction that KJRY seeks to accomplish does not even preserve the existing competitive structure at Duck Creek. As such, it is hardly necessary to state that it does not enhance competition, and is directly at odds with the new standard: "[The new policy] disfavors mergers that reduce competitive options for shippers absent substantial overriding public benefits." *Id.* Thus, to the extent that merger precedent is relevant to this proceeding, KJRY has invoked out-dated case law that does not reflect the Board's premium on enhanced rail-to-rail competition.

And, more recently, outside the merger context, the Board has stated that it will not authorize a transaction that diminishes competition. *See* STB Docket No. AB-124 (Sub-No. 2), *Waterloo Railway Co.—Adverse Abandonment— Lines of Bangor and Aroostook Railroad Co.* 2004 STB Lexis 280 (STB served May 3, 2004). When a transaction will deprive a shipper of existing rail competition (as will the Lease Transaction), the Board has determined that the proponent of the transaction bears a difficult burden: "The burden to show that the Board should extinguish competition where it already exists is a difficult one to meet because the Board is guided by its governing statutes and policies, which make competition important. In particular, the RTP emphasizes the role of competition, at 49 U.S.C. § 10101(1), (4), and (5)." *Id.* at *11. The Board will not countenance the elimination of competitive options "absent a very strong showing that such action is in the public interest." *Id.* at *12. KJRY's Petition does not come close to making this showing, especially given the fact that any purported benefits are, at best, speculative and unsubstantiated.

II. AMEREN'S CLARIFICATIONS OF CERTAIN MISSTATEMENTS AND OMISSIONS BY KJRY AND BNSF

A. Clarifications of Certain Facts Regarding Potential Shippers on the Line

Ameren wants to see KJRY's operation of its east-west line to be successful and to stimulate economic growth in the Canton area. In fact, Ameren, via its agreement with KJRY to provide service to Duck Creek, paid for the rehabilitation and upgrade of the KJRY east-west line between Hollis and Canton.[15] Since February 2006, Ameren has shipped over one million tons of coal with KJRY over the past year, creating millions of dollars of revenue for KJRY. J.V.S. Neff/Hof at 4. Instead, it is KJRY that has stated KJRY intends to use the guaranteed captive Duck Creek plant revenues to subsidize investments to KJRY's operations that will not be used for Duck Creek service. Petition at 22.

Furthermore, Ameren has supported CIE and contrary to KJRY's assertions, Ameren has neither threatened to cancel its lease with CIE nor reneged on the lease agreement. *See* Petition at 10, n 9. The lease of Ameren's private track with CIE was signed in August 2004, years before the Lease Transaction and even before KJRY owned the east-west line. Ameren has upheld all aspects of the lease, including making investments in the private track that are not currently needed for Duck Creek rail service. Ameren has done nothing to change CIE's rail situation and nothing that would negatively impact CIE's construction schedule. To the contrary, Ameren completed track maintenance on its track last week so that it is currently ready

[15] KJRY submitted a letter dated December 8 from the Mayor of Canton, Rodney Heinze as part of KJRY's December 19 opposition to Ameren Motion for Extension of Time. Ameren met with Mayor Heinze on December 12 which was the soonest day possible after Ameren had heard of the Mayor's concerns about Ameren's involvement in this proceeding. Ameren shared its side of the story with the Mayor and Ameren believes that the Mayor understands that Ameren shares the goals of the Mayor. As part of the meeting with the Mayor, Ameren was also able to clear up the hold by the City of Canton on an unrelated Ameren project that apparently had been caused by KJRY's meeting with the Mayor and KJRY's request for the Mayor's letter. J.V.S. Neff/Hof at 4.

for BNSF to provide service to CIE even though CIE had told Ameren that CIE would not need the track serviceable until February 28, 2007 and even though CIE has told Ameren that CIE's track work to connect to the Ameren track will not be completed until April 2007. J.V.S. Neff/Hof at 4-5.

It is undisputed that Ameren has been the only recent shipper on the Line. It is equally uncontroverted that CIE, Hitchcock and United are potential shippers and that they do not currently use the Line. However, it is equally uncontroverted that CIE's potential traffic is approximately 2,000 carloads per year (assuming that CIE moves all its ethanol and grain by rail) and Hitchcock and United might generate 1,100 carloads annually combined. Petition at 9-10. By comparison, the Duck Creek plant requires at least 9,000 carloads per year a fact that lends credibility to Ameren's belief that KJRY's true motivation for the Lease Transaction is to make Ameren captive to KJRY for all traffic to Duck Creek.

B. Clarifications to KJRY's Misstatements and Omissions Regarding the Settlement Discussions

The Board is fully aware that Ameren and KJRY attempted to negotiate a settlement. Various proposals were exchanged, including the self-serving letter that KJRY provided to Ameren not long before KJRY filed its Petition. *See* Petition Exhibit G. KJRY did offer as a counterproposal to one of Ameren's proposals that KJRY would "lock-in" a rate for the term of the BNSF Lease. However, this rate was not competitive and would have locked Ameren into a very high rate in addition to imposing substantial new costs. As part of Ameren's proposal to the KJRY, Ameren would have agreed to provide KJRY access to CIE via Ameren's spur connection to the Line for the term of the BNSF Lease. Finally, Ameren advised KJRY that Ameren had no concerns with KJRY's Lease or acquisition of the northern portion of the Line, from Dunfermline to Farmington, [

]

J.V.S. Neff/Hof at 6-7.

KJRY never offered to freeze Ameren's rate as claimed in KJRY's Reply to the Motion for Extension of Time at 3. J.V.S. Neff/Hof at 5-6. Instead, as KJRY admits in the Highly Confidential portion of its Petition, the base rate offered in KJRY's alleged "freeze" proposal was based upon a [ ] V.S. Brennan at 9. Counsel assumes that KJRY's expert meant to state the proposed "freeze" was based [ ] since Ameren has only shipped on KJRY since February 2006 and KJRY has stated that it does not know the BNSF or UP rates. KJRY also fails to mention that the current KJRY-Ameren agreement [ ] for the significant investments that would be needed to rehabilitate the portion of KJRY's newly acquired east-west line to move and increase the speed for Duck Creek's coal traffic. J.V.S. Neff/Hof at 4. Claiming Ameren's refusal to agree to such an alleged "freeze" proposal somehow discloses Ameren's "true objective that has nothing to do with competition" is disingenuous at best. Reply to Motion for Extension at 3. Moreover, Ameren's current rates with KJRY do not contain [ ] bolsters Ameren's claims of competitive harm. J.V.S. Neff/Hof at 5-6.

As part of its settlement discussions with KJRY, Ameren stated that it did not object to KJRY obtaining the northern portion of the Line. In addition, Ameren would consider KJRY leasing the whole Line so long as the Lease was modified to clarify that BNSF retains the right and obligation to serve Ameren directly with no KJRY involvement, *i.e.* maintain the status quo for Ameren. Further, under these scenarios, if BNSF has no desire to provide rail service to CIE then Ameren would consider a request by CIE to modify the lease agreement to permit KJRY to serve CIE via the BNSF Line. J.V.S. Neff/Hof at 6.

Finally, as Ameren has previously stated, Ameren would be amenable to a Class III carrier other than KJRY leasing the Line. While injecting a short line into the current direct BNSF unit coal train movement adds certain costs to the movement, Ameren recognizes that there may be some benefits to BNSF, the Class III carrier and other potential shippers if a short line operator other than KJRY operates on the Line. Moreover, Ameren remains open to other proposed solutions as long as any proposal does not result in the diminution of competition to at Duck Creek. J.V.S. Neff/Hof at 6.

C. BNSF's Comments Provide No Additional Support For The Transaction

BNSF's Comments filed December 27 in Finance Docket No. 34974, do not provide additional support for KJRY or the Lease Transaction. BNSF's Comments focus primarily on its assertion that BNSF carefully structured the Lease so as to protect Ameren. This is an argument that BNSF would understandably make particularly in light of the fact that the Board has reminded the parties that BNSF still has the common carrier obligation on this Line. STB Finance Docket No. 34974, *Keokuk Junction Railway Company d/b/a/ Peoria and Western Railway—Lease and Operation Exemption—BNSF Railway Company* (STB served Dec. 20, 2006) n. 1. In addition, the fact that BNSF filed Comments at all might be justified by terms of the Lease as explained further in V.S. Plaistow at 5.

BNSF's Comments do not fully explain its offer to sell the Line to Ameren. Contrary to the Verified Statement of Dennis Eytcheson attached to BNSF's Comments, BNSF did not "negotiate" with Ameren regarding the sale. V.S. Eytcheson at 1. Ameren was given the opportunity to make an offer to purchase a portion of the line. [

] J.V.S. Neff/Hof at 6-7.

Most importantly, BNSF's failure to acknowledge it still has the common carrier obligation on the Line and BNSF's failure to acknowledge that it has an agreement with CIE is peculiar. BNSF only states it is "aware" of potential shippers, including CIE, which BNSF states "could be served by KJRY via the Line" and Hitchcock and United, which BNSF states "have indicated a willingness to use rail service." BNSF Comments at 4. BNSF could and should be

[16] Letter from BNSF and KJRY to Mr. Michael G. Mueller, President, Ameren Energy Fuels and Services Company, (Jul. 14, 2006). Attached as Exhibit D.

working today with CIE to arrange for future shipments including the construction materials that CIE discusses in its Letter. Petition Ex. C. at 1. BNSF admits that Hitchcock and United are existing industries and they are in fact located directly on the BNSF Line. BNSF fails to address why BNSF does not currently provide service to these industries. The state of disrepair of the Line, BNSF's actions with respect to CIE and the existing industries combined with KJRY's remarks regarding BNSF's lack of interest in marketing the Line might be more appropriately addressed in a feeder line case.

Finally, BNSF's "enhanced" competition argument is groundless and unsupported by the facts. BNSF Comments at 5. Like KJRY, BNSF asserts that the transaction will provide competitive offerings to KJRY's connections to BNSF, CN, IAIS, IMRR, NS, TPW and UP. Ameren, as the only recent traffic on the Line, already has access to all of these KJRY connections via Ameren's private investment in rail infrastructure that was made consistent with a paramount tenet of the STB. In addition, the shippers in the Canton area should enjoy these same KJRY connections via KJRY's east-west line that runs through Canton. This transaction will not add new competitive options for these shippers and in fact it will eliminate a direct BNSF routing. Thus, BNSF's enhanced competition argument begins and ends with CIE and, as discussed previously, the proposed transaction would not provide CIE with enhanced competition.

CONCLUSION

The Lease Transaction substantially diminishes competition at Ameren's Duck Creek facility and will strip Ameren of the competitive options created by Ameren's capital investment. Therefore, Ameren respectfully requests that the Board deny KJRY's Petition for Exemption.

Respectfully submitted,

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EXHIBIT A

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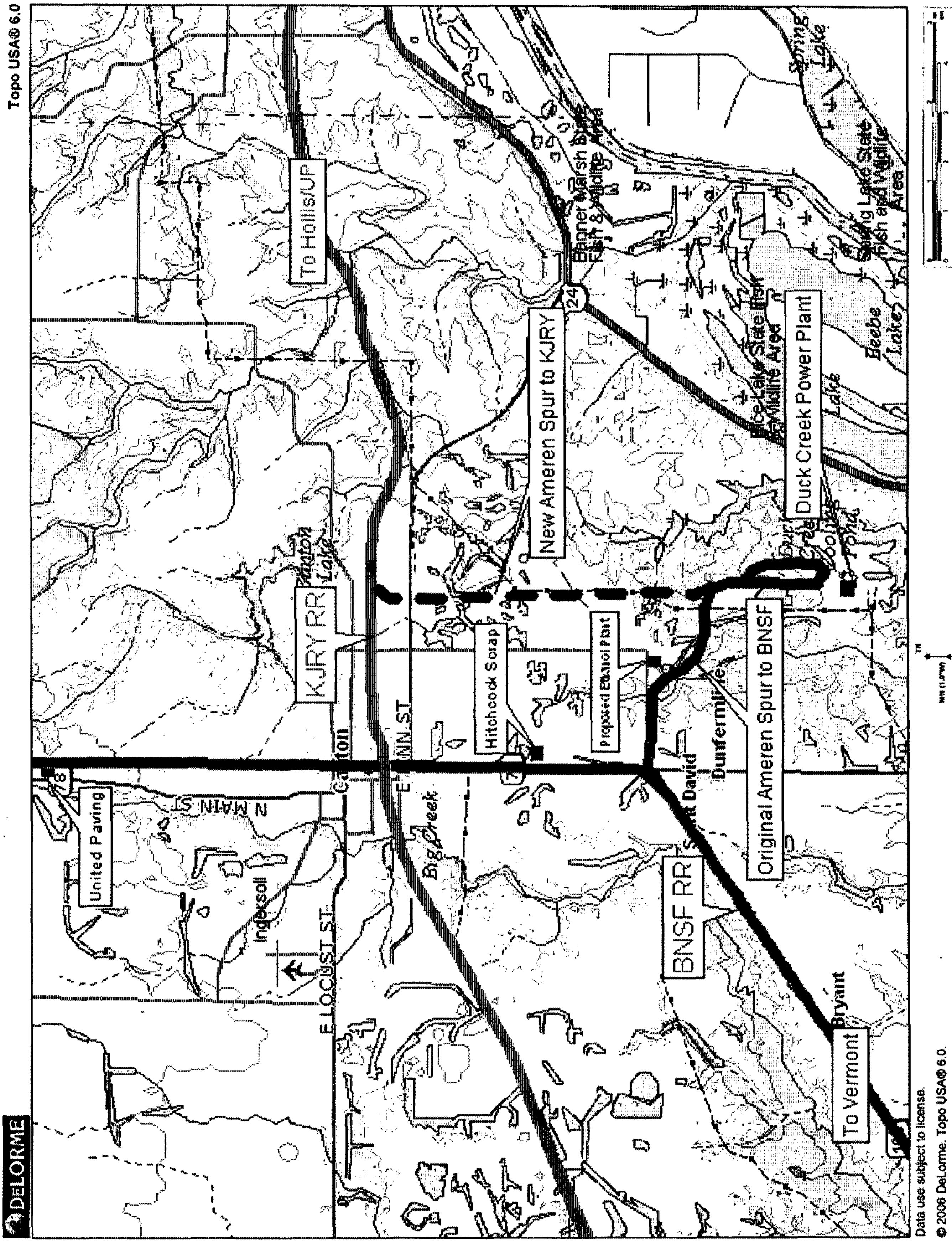

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EXHIBIT B

PUBLIC VERSION
[Bracketed Material is Redacted]

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34974

KEOKUK JUNCTION RAILWAY CO. d/b/a PEORIA & WESTERN RAILWAY – LEASE AND OPERATION EXEMPTION – BNSF RAILWAY COMPANY BETWEEN VERMONT and FARMINGTON, ILLINOIS

JOINT VERIFIED STATEMENT OF
ROBERT K. NEFF AND GLENNON P. HOF

Mr. Neff Background

My name is Robert K. Neff. I am the Vice President, Coal Supply for Ameren Energy Fuels and Services Company ("AFS"), an affiliate of Ameren Corporation. (Ameren Corporation and its subsidiaries are hereinafter collectively referred to as "Ameren" unless further distinction is necessary.) My business address is 1901 Chouteau Avenue, St. Louis, Missouri 63103. My responsibilities as Vice President of Coal Supply include the acquisition of coal and related transportation for all of the electric utility operating subsidiaries of Ameren including Ameren Energy Resources Generating Company ("AERG"). I have worked in the fuel transportation area with the Ameren family of companies for over 17 years.

Mr. Hof Background

My name is Glennon P. Hof and I am the Manager, Coal Operations for AFS. My business address is 1901 Chouteau Avenue, St. Louis, Missouri 63103. My responsibilities as Manager, Coal Operations include the acquisition of coal-related transportation services for all the electric utility operating subsidiaries of Ameren including AERG. I have worked in the fuel transportation area with the Ameren family of companies for over 15 years.

Purpose of the Statement

The purpose of this verified statement is to provide factual information relative to Ameren's Reply to Keokuk Junction Railway Co. ("KJRY")'s Petition for Exemption in Finance Docket No. 34974, *Keokuk Junction Railway Co. d/b/a Peoria & Western Railway--Lease and Operation Exemption--BNSF Railway Company.*

The Duck Creek Plant

Ameren Corporation, through its utility operating subsidiaries, provides electricity to 2.3 million customers in Missouri and Illinois. AFS is responsible for the procurement of coal supply, including the acquisition of related transportation, for all of Ameren Corporation's utility operating subsidiaries. AERG, one of Ameren Corporation's non-regulated generation subsidiaries, owns the Duck Creek Power Plant ("Duck Creek" or "Duck Creek plant") which is located along the Vermont Line.

Ameren acquired the Duck Creek plant in 2003. Duck Creek receives about one million tons of coal per year which equals approximately 9,000 carloads. At the time Ameren purchased Duck Creek, the plant was captive for rail service to the BNSF Railway Company ("BNSF") which served the plant via Ameren's private track that connects to the Vermont Line at Milepost 67.28 which is approximately .58 miles south of Dunfermline (Milepost 66.7) and approximately five miles south of the Vermont Line's intersection with the KJRY east-west line at Canton, Illinois. The portion of the Vermont Line used for the Duck Creek service is approximately 27 miles of the approximately 42 miles that BNSF proposes to lease to KJRY in this proceeding.

Ameren understands that the Duck Creek coal traffic was the only traffic moving on the Vermont Line since at least the time that Ameren acquired the Duck Creek plant and until the end of 2005.

Ameren's Investments in Rail Competitive Options

As the Board is aware and has encouraged, Ameren has aggressively sought to establish competitive transportation alternatives at all of its rail-served coal-fired plants via shipper-made infrastructure investments. In order to achieve this goal, Ameren has invested its own capital to build and purchase rail lines and Ameren has made significant investments in rail infrastructure and equipment in order to expand competitive railroad options at its coal-fired plants. In keeping with Ameren's goal for competitive service at all of its plants, in 2005 Ameren constructed a new private track extending from the Duck Creek plant to a point of connection with the KJRY east of Canton, Illinois. This track was constructed in order to establish competitive access for Duck Creek to the Union Pacific Railroad ("UP") via KJRY's connection to UP at Hollis. Thus, Ameren can presently put its traffic out for bid and chose the rate and service terms that best meet Ameren's needs. In fact, Ameren did exactly this in 2005 for transportation beginning in February 2006 via Ameren investment in its new private spur that connects to KJRY. Ameren entered into separate agreements and separate billing arrangements with KJRY and UP for this new rail route to Duck Creek. In February 2006, the first coal trains were delivered to Duck Creek via the KJRY/UP routing. Thus, as a result of Ameren's expenditure of capital to construct the private line, Ameren currently has two separate and independent rail routes at Duck Creek – direct BNSF and the KJRY/UP.

The proposed KJRY lease of the BNSF Line will undermine the benefit of Ameren's innovative, private sector initiative, and eliminate Ameren's ability to choose between two independent competitive routes. Contrary to the picture KJRY has painted, Ameren wants to see

KJRY be successful in its east-west line and is in favor of economic growth in the Canton area. In fact, Ameren, via its [

][1] Ameren has shipped over one million tons of coal with KJRY over the past year, creating millions of dollars of revenue for KJRY. However, Ameren cannot permit KJRY to take actions that would result in a diminution of competition at Duck Creek which harms the competitiveness and potential viability of the Duck Creek plant.

<u>The Ethanol Plant</u>

The ethanol plant that is being constructed by Central Illinois Energy ("CIE") will be located next to the same rail spur that presently connects Duck Creek to the BNSF Vermont Line (the line under consideration for lease to KJRY). As such, CIE asked Ameren if CIE could use Ameren's private track. Ameren agreed and entered into a lease with CIE in August 2004 for CIE to have BNSF serve CIE. We understand that CIE also has an agreement with BNSF to provide service to the site of the proposed ethanol plant. Ameren has continued to uphold the terms of its agreement with CIE. Ameren has never threatened to cancel its lease with CIE nor has Ameren reneged on the lease agreement. The lease of Ameren's private track with CIE was signed more than two years before BNSF proposed to lease its Line to KJRY, during a time that Duck Creek was served only by BNSF and before KJRY owned the east-west line.

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1 We understand that KJRY submitted a letter dated December 8 from the Mayor of Canton, Rodney Heinze as part of KJRY's December 19 opposition to Ameren's Motion for Extension of Time. Mr. Neff met with Mayor Heinze on December 12 which is the soonest day possible after Ameren had heard of the Mayor's concerns about Ameren's involvement in this proceeding. Mr. Neff shared Ameren's side of the story with the Mayor and Ameren believes that the Mayor understands that Ameren shares the goals of the Mayor for economic development in Canton. As part of the meeting with the Mayor, Ameren was also fortunately able to clear up the hold by the City of Canton on an unrelated Ameren project that apparently had been caused by KJRY's meeting with the Mayor and KJRY's request for the Mayor's letter.

We strongly believe that Ameren has done nothing that would negatively impact CIE's construction schedule. To the contrary, Ameren completed track maintenance on its track in December 2006 so that it is currently ready for BNSF to provide service to CIE. Ameren completed this work early and even though CIE had told Ameren that CIE would not need the track serviceable until February 28, 2007 and CIE had told Ameren that CIE's track work to connect to the Ameren track will not be completed until April 2007. Since Ameren is not currently using its private track that connects to the BNSF Line, Ameren would not normally keep the same level of maintenance on the track as Ameren had expected when Ameren provided CIE lease rights to use the track. However, Ameren is upholding the lease agreement which provides [ ]

Settlement Proposals

As the Board is aware, Ameren and KJRY attempted to negotiate a settlement. Various proposals were exchanged, including the letter KJRY provided Ameren a couple weeks before KJRY filed its Petition which we understand is attached as Highly Confidential Exhibit G to KJRY's Petition. KJRY did offer as a counterproposal to one of Ameren's proposals that KJRY would "lock-in" a rate for the term of the BNSF lease. However, this rate was not competitive and would have locked Ameren into a very high rate in addition to other new costs that would be added on. As part of Ameren's proposal to the KJRY, Ameren would have agreed to provide KJRY with access to CIE via Ameren's spur connection to the Line for the term of the BNSF Lease. We both advised KJRY that Ameren had no concerns with KJRY's lease or acquisition of the northern portion of the Line, from Dunfermline to Farmington.

However, KJRY never offered to <u>freeze</u> Ameren's rate as claimed in KJRY's Reply to the Motion for Extension of Time. Besides the fact that the base rate offered in KJRY's counterproposal [

] included as add-ons to the alleged "frozen" rate. Thus, KJRY's assertion that it offered to "freeze" Ameren's rate is false.

As part of its settlement discussions with KJRY, Ameren stated that it did not object to KJRY obtaining the northern portion of the Line. In addition, Ameren would consider KJRY leasing the whole Line so long as the Lease was modified to clarify that BNSF retains the right and obligation to serve Ameren directly with no KJRY involvement, *i.e.* maintain the status quo for Ameren. Further, under these scenarios, if BNSF has no desire to serve CIE then Ameren would consider a request by CIE to modify the Lease agreement to permit KJRY to serve CIE via the BNSF Line.

Finally, as Ameren has previously stated, Ameren would be amenable to a Class III carrier other than KJRY leasing the Line. While injecting a short line into the current direct BNSF unit coal train movement adds certain costs to the movement, Ameren recognizes that there may be some benefits to BNSF, the Class III carrier and other potential shippers from a short line operator other than KJRY on the Line. Moreover, Ameren continues to be open to other proposed solutions as long as any proposal does not result in the diminution of competition to Ameren.

<u>Ameren's Offer to Purchase the BNSF Line</u>

Contrary to the Verified Statement of Dennis Eytcheson attached to BNSF's Comments, BNSF did not "negotiate" with Ameren regarding the sale of the Line. Ameren was only given the opportunity to [

] Two days later, the joint BNSF-KJRY letter dated July 14, 2006 was sent which then showed that in fact the Line was not sold at all, but leased. [

]

Conclusion

Ameren currently has two separate and independent rail routes at Duck Creek which are the direct BNSF route and the KJRY/UP route. The proposed KJRY lease of BNSF's Line will undermine the benefit of Ameren's innovative, private sector investment and eliminate Ameren's ability to choose between the two independent competitive routes. Ameren cannot permit KJRY to take actions that would result in a diminution of competition at Duck Creek which harm the competitiveness and potential viability of the Duck Creek plant.

I, Robert K. Neff, verify under penalty of perjury that the foregoing is true and correct based on my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this verified statement.

Robert K Neff

Robert K. Neff
Vice President, Coal Supply
Ameren Energy Fuels and
Services Company

Dated: 1/5/07

I, Glennon P. Hof, verify under penalty of perjury that the foregoing is true and correct based on my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this verified statement.

Glennon P. Hof

Glennon P. Hof
Manager, Coal Operations
Ameren Energy Fuels and
Services Company

Dated: 1/5/07

EXHIBIT C

PUBLIC VERSION
[Bracketed Material is Redacted]

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34974

KEOKUK JUNCTION RAILWAY CO. d/b/a PEORIA & WESTERN RAILWAY – LEASE AND OPERATION EXEMPTION – BNSF RAILWAY COMPANY BETWEEN VERMONT and FARMINGTON, ILLINOIS

VERIFIED STATEMENT OF JOSEPH J. PLAISTOW

I. INTRODUCTION

My name is Joseph J. Plaistow, and I am presently a Vice-President at L. E. Peabody and Associates, Inc., a consulting firm that specializes in rail economics, among other subjects. In my work as a consulting rail economist, I have provided expert testimony for submission in many proceedings before the Surface Transportation Board ("STB" or "Board") and its predecessor, the Interstate Commerce Commission, including major railroad mergers, rate reasonableness cases, rail line acquisitions, and abandonments. I have over 34 years of experience working on matters related to rail economics, and during my career, I have worked for, or on behalf of both rail shippers and carriers. I received a MBA from the University of Minnesota in 1972 and a BS in Metallurgical Engineering from the Michigan Technological University in 1967. My curriculum vitae is attached hereto.

I have prepared this Verified Statement at the request of Ameren Energy Fuels and Services Company ("Ameren") for submission in STB Finance Docket No. 34974. This proceeding concerns a Lease of Rail Operations ("Lease Transaction") between the Keokuk

Junction Railway Company d/b/a Peoria and Western Railway ("KJRY") and the BNSF Railway Company ("BNSF") for a line of rail between Vermont, IL and Farmington, IL (the "Line") in BNSF's Yates City Subdivision. My testimony focuses upon the immediate competitive harm that the Lease Transaction will inflict upon Ameren's Duck Creek electric generating station ("Duck Creek"), located on the Line, with regard to the unit train transportation of coal. In particular, my testimony responds to arguments and representations that KJRY makes in its Petition for Exemption ("Petition"), including the Verified Statement of its expert witness, William J. Brennan, PhD (respectively "V.S. Brennan" and "Dr. Brennan"). In order to prepare this Verified Statement, I have, among other things, reviewed the Highly-Confidential version of the Petition, including the exhibits thereto, and the various STB decisions and filings of the parties in STB Finance Docket No. 34918, which also concerned the Lease Transaction.

II. THE LEASE TRANSACTION CAUSES SEVERE COMPETITIVE HARM TO AMEREN'S DUCK CREEK GENERATING STATION

A. The Lease Transaction Destroys the Competitive Market for Rail Services at Duck Creek and Deprives Ameren of its Ability to Control its own Traffic

KJRY is fundamentally wrong in asserting that the Lease Transaction will not cause competitive harm to Ameren's Duck Creek facility. In making this argument, KJRY ignores the fact that the Lease Transaction will profoundly disrupt the existing competitive market that Ameren established at Duck Creek, and effectively transfer control over the coal traffic from Ameren to KJRY. By undermining or diminishing the existing competition between BNSF and KJRY and the Union Pacific Railroad Company ("UP"), the Lease Transaction will expose the Duck Creek facility to abuse of market power and increased rail rates. Moreover, the Lease Transaction will not otherwise generate benefits for other potential shippers along the Line.

1. Summary of Existing, Direct Rail-to-Rail Competition at Duck Creek

Presently, Ameren enjoys the benefits of direct, rail-to-rail competition for the delivery of coal to its Duck Creek facility. The pre-transaction competitive picture involves two independent routes: (1) the single line BNSF route competing against (2) the joint line KJRY/UP route. Within this market, competitive forces naturally discipline the rates offered by BNSF and UP for the transportation of the traffic. Competition also brings the risk that either carrier might lose the traffic (and substantial revenue) by overpricing its service. With regard to KJRY, the risk of losing the traffic exerts downward pressure on its portion of the proportional rate for the existing UP/KJRY routing. KJRY recognizes that by demanding an excessive rate for its part of the UP movement, it would likely drive up the overall rate and create an opportunity for BNSF to win the traffic, in which case KJRY would receive no revenue, at all. This risk gives KJRY a very strong incentive to maintain competitive pricing for its part of the movement. And, the vigorous marketplace ultimately inures to Ameren's benefit in the form of lower rates and better service.

2. Explanation of the Destructive Effect of the Lease Transaction on Competition at Duck Creek and Harm to Ameren

The Lease Transaction destroys the competitive market at Duck Creek. By ensuring that KJRY will receive revenue from the coal movement, regardless of which carrier provides the long-haul move, the transaction eliminates KJRY's incentive to compete effectively against BNSF by providing a competitive rate within the UP/KJRY route. Instead, it creates an incentive for KRJY to extract a revenue share within the UP/KJRY routing that is larger than the share generated under its per-car arrangement with BNSF, which will act as a revenue floor.

[

] As a profit-maximizing, self-interested firm, KJRY will relentlessly push its share upward to the point where UP's service will become uneconomic. And, if UP refuses to cooperate by starving its own revenue to maintain overall competitiveness, then KJRY will face no consequences for bidding the UP/KJRY routing out of competition, thereby shifting the traffic to the BNSF/KJRY routing. Accordingly, the Lease Transaction will destroy the competitive market at Duck Creek and transfer ultimate control over Ameren's coal traffic to KJRY.

In turn, the destruction of the competitive market will subject Ameren to an abuse of market power, which could become manifest in a variety of ways, but will ultimately increase rates for the movement to Duck Creek. As its premium for restoring Duck Creek's captivity, KJRY will gain leverage against BNSF, and it might pursue greater compensation under the Lease Transaction. Or, KJRY might use its leverage at Duck Creek to extract concessions from UP or BNSF on other traffic. Any such demands would pressure UP or BNSF to raise the rail rate charged to Ameren in order to maintain the economics of the long-haul movement. Or, independently, in the absence of competition from UP, BNSF might simply seize upon its new-

[1] [

]

found power to maximize its rate. KJRY, of course, will boost its own rate via the UP movement to Ameren's detriment in order to capture more revenue than it would receive in the BNSF routing. All of the foregoing actions would distort the competitive forces that presently drive rates down, rather than up. In any event, it is obvious that the destruction of the competitive market at Duck Creek, caused by the Lease Transaction, will fundamentally expose Ameren to abuse of market power, and reverse the downward pressure on rail rates.

Additionally, KJRY wrongly claims that BNSF's right to unilaterally cancel the lease substantially diminishes KJRY's ability to exercise market power. It notes that BNSF may cancel the lease [ ] BNSF would be loathe to invoke it absent a serious provocation. In addition, BNSF's right of cancellation does nothing to negate KJRY's incentive to demand a rate from Ameren for the UP/KJRY routing that is higher than the already [ ] rate established in the Lease Transaction for the 26 mile haul from Vermont to Duck Creek. It should be noted that KJRY's only investment in the move is manpower, since the shipper will furnish railcars and the origin carrier will provide the locomotives.

For the foregoing reasons, I profoundly disagree with the assertion made by KJRY that the Lease Transaction changes nothing with regard to the competitive rail market at Ameren's Duck Creek facility. In my opinion, the Lease Transaction radically alters the competitive picture, virtually eliminates rail-to-rail competition, and substantially undermines Ameren's considerable investment in establishing competitive rail options at Duck Creek.

B. KJRY's Characterization of the Competitive Harm to Ameren Starts with a Faulty Premise and Offers Irrelevant Economic Theory

KJRY misrepresents the immediate and obvious competitive harm to Ameren because it proceeds from a faulty premise and offers irrelevant economic theory. Indeed, KJRY's critique begins on the wrong path when it takes as its starting point the situation in which a shipper is solely served by a bottleneck shortline carrier that, in turn, connects to two Class I carriers. V.S. Brennan at 3. While I disagree with KJRY's mostly theoretical analysis of competitive forces in this particular scenario, it is manifestly the wrong starting point for any analysis because it does not reflect the existing competitive market at Duck Creek, essentially head-to-head competition between BNSF and UP/KJRY.

In order to gauge the real competitive harm to Ameren it is necessary to make an "apples-to-apples" comparison: competition before and competition after consummation of the Lease Transaction. As noted above, Ameren currently enjoys a competitive market in which BNSF and UP/KJRY independently challenge one another for the opportunity to serve the facility. Ameren has complete control over the routing of its traffic and can choose the service provider that best meets its rate, service and other requirements. By comparison, the marketplace will be dramatically different after the transaction—indeed, it is inaccurate to use the term "marketplace" to characterize the post-transaction scenario. Because the Lease Transaction will ensure that KJRY profits from Ameren's traffic and, correspondingly, will remove its incentive to compete against BNSF, effective rail competition at the facility will evaporate. KJRY will gain unfettered power to drive up its rate for the UP/KJRY movement, and even to force UP out of the market, thereby taking ultimate control over the traffic. KJRY's new-found market power will push rates upward in contrast to the downward pressure of the competitive marketplace.

Instead, Dr. Brennan focuses on the post-consummation scenario in a disingenuous effort to show the presence of effective competition. Here his analysis boils down to little more than repetition of the statement that KJRY lacks "pricing authority" within its separate relationships with UP and BNSF. But, KJRY is simply refusing to honestly consider the changed incentives among all three of the service providers. If the proposed Lease Transaction grants additional market power to KJRY within either the KJRY/BNSF or the KJRY/UP route, then the proposed Lease Transaction will harm competition. Plainly, it does. KJRY will gain pricing authority against UP because the transaction ensures that it will receive [ ] revenue from the Duck Creek Traffic no matter which carrier performs the line-haul. And, in the space of six pages, KJRY concedes this very point, going from: "Because KJRY does not have pricing authority over both routes, it can not exercise that power against UP and BNSF and capture monopoly rent for itself" (V.S. Brennan at 4) to "Rather, any market power KJRY might possess would not be exercised against Ameren, but would more likely be reflected in changing the divisions between UP and KJRY" (V.S. Brennan at 9-10) (emphasis added). On the same page, KJRY again concedes that it will gain market power against UP when it asserts that it could never exercise this market power for fear of suffering "collateral damage" at the hands of UP, elsewhere on its network. V.S. Brennan at 10. Aside from its admission, KJRY makes a hollow point: KJRY could use its new market power at Duck Creek to decide whether the traffic will move over BNSF or UP.

Having admitted that it will, in fact, gain market power against UP, KJRY's disingenuous characterization of post-transaction competition implodes. Contrary to all of its assertions, the effective rail market will cease to exist, and instead of having an incentive to name a competitive rate for its part of the UP/KJRY route, KJRY will have an incentive—as a profit maximizing firm—to maximize its rate above the [ ] floor set in the Lease for the 26 mile haul from Vermont to Duck Creek. Indeed, the compensation under the [ ] Of course, this will be only the beginning of its market power, which might cause KJRY to price UP out of the market, and then potentially demand increased compensation, or other concessions from BNSF for doing so. Ultimately, the competitive harm will redound to Ameren's detriment, eliminating its choice of carriers in a competitive market and forcing its rates to levels extracted from captive shippers.

Because KJRY's analysis fails to honestly address the pre-versus post-transaction competitive situation at Duck Creek, it should be rejected. Moreover, because KJRY has failed to present a valid assessment of the post-transaction harms, there is little point in critiquing its "2-1" analysis which serves only as a strawman argument to distract attention from the underlying, yet obvious flaws in its purported analysis. In fact, KJRY knows that one-lump analysis is inapposite and that Ameren never proposed it as a paradigm for this case. The proposed Lease Transaction involves vertical dis-integration, not vertical integration. Dr. Brennan's explanation of the one-lump theory and vertical integration relies upon the existence of a destination monopoly before and after the transaction. V.S. Brennan at 3-5. The Lease

Transaction does not fit this explanation because, as noted above, before the transaction, no destination monopoly existed, i.e., the BNSF single-line haul competed against the KJRY/UP haul. It is precisely the consummation of the Lease Transaction that would create a destination monopoly and the potential for monopoly profits to Ameren's detriment.

C. KJRY Incorrectly Argues that the Economic Benefits will Arise from the Lease Transaction, and that these Benefits will Flow to Ameren

KJRY is simply mistaken in contending that the Lease Transaction will produce economic benefits, and that such benefits would flow to Ameren, if they existed. Even if KJRY were correct as a matter of theory, which it is not, the Verified Statement of its expert witness offers no substantive data pertaining to KJRY's potential operations over the Leased Line, as is required in order to establish that its theory plays out in practice. Thus, KJRY's purported economic analysis amounts to only the thinnest, self-serving conjecture about the supposed financial benefits of its operations.

KJRY's "proof" that it will achieve economic gains from operating the Leased Line is simply speculation. KJRY begins with the premise that shortlines "generally" operate light-density lines more efficiently than Class I carriers. V.S. Brennan at 7. While this very general theory has some truth, it typically describes the situation in which a shortline operates a single, former branch line, or a discrete, integrated network, handling carload traffic from a limited number of shippers. KJRY's potential operation of the Line does not readily fit this paradigm, since its base of operations is located near Peoria. But, of far more importance, the theory also breaks down because Ameren's traffic involves unit coal train operations which differ dramatically from true light-density lines that handle only carload traffic. The presence of Ameren's traffic alone would boost line densities above the theoretical "Q point," identified in Dr. Brennan's verified statement at page 7. KJRY has no efficiencies to offer that are greater than those already provided in coal unit train service, and KJRY's involvement would actually increase costs of the single-line movement by adding another interchange. Thus, KJRY's theory is simply inapposite.

Despite these telling distinctions, KJRY proceeds to make what is at most a theoretical conclusion: that because KJRY is a shortline and because the Leased Line is a light-density line, KJRY will operate the line at lower cost than any Class I, in this case BNSF. Given the flawed underpinnings of its theory, KJRY's conclusion has no value. Indeed, it would be wonderful if rail economics were simply a matter of applying broad generalizations. But, as the Board well knows, this discipline is far more complex.

Indeed, in order to establish that it will be the low cost operator of the Leased Line vis-à-vis BNSF, or any other operator, KJRY should have obtained (or forecasted) data concerning the costs of operating the line, such as maintenance of way, locomotive and railcar costs, crew and personnel costs, fuel costs, and insurance expenses, among others. In place of any such competent evidence, KJRY offers only additional speculation: BNSF could employ its crews "more intensively on its high-density corridors" and "KJRY would not, in all likelihood, need to hire a new general manager, marketing manager, maintenance supervisor, or additional back-office support." V.S. Brennan at 8. The first statement has no bearing on KJRY's operations. The second does not establish any comparative benefit over another established shortline, such as Genessee & Wyoming Company (which also operates in the Peoria-Springfield corridor), or over a Class I operator (because back-office staffing is not an area where shortlines realize efficiency gains over major carriers). Indeed, only a few pages later, the Verified Statement actually casts doubts on the economics for KJRY: [

] V.S. Brennan at 9 [emphasis added]. Accordingly, because KJRY has provided no competent data or analysis as to its potential operating costs, the Board must reject its unsupported conclusion that it will achieve economic benefits as the low-cost operator.

Similarly, KJRY fails to demonstrate how the purported benefits of its operation of the Line would translate into any gain (or saving) for Ameren. The costs at issue are the costs to the railroads, not costs to Ameren. The cost to Ameren is what the railroads choose to charge as rates. The railroads' costs only affect the railroads' profit margins. Cost efficiencies, if any, would be retained by the railroads, not passed along to Ameren. In particular, KJRY's costs are not relevant because, as a bottleneck monopolist, KJRY will extract a rate based upon its substantial market power, and that rate will far exceed its costs. KJRY merely assumes (1) that its contract operation of the Line will result in substantial cost-savings for BNSF, and (2) that BNSF, in turn, will pass these savings on to Ameren, in the form of a lower rate. As noted above, however, KJRY submits no evidence whatsoever regarding its own or BNSF's economics for the Line, so its first assumption is just speculation. In order to establish this assumption, at a minimum, it would have been necessary for KJRY to submit evidence comparing BNSF's costs of transporting Ameren's coal traffic from Vermont to Dunfermline and BNSF's costs of paying KJRY to perform this task under the lease agreement. Again, KJRY offers no such evidence, and instead supplies conclusory allegations: "There is every reason to expect that BNSF can lower its total costs by contracting with KJRY to handle final delivery of Ameren's coal." V.S. Brennan at 8. Lacking any data, this statement has no probative value.

KJRY's second assumption is equally flawed: At various points, KJRY emphasizes that BNSF and UP are self-interested, profit-maximizing firms. Petition at 16-17; V.S. Brennan at 5-6, 9. Thus, KRJY defies its own logic when it contends that BNSF would enter into a supposedly advantageous, cost-saving lease of operations, simply to deliver these savings to Ameren. In fact, this scenario is even more implausible given that the destruction of competition at Duck Creek will dramatically alter the marketplace and potentially render the facility captive to BNSF, as described above. Aside from repeating its flawed assumption, KJRY offers no substantive evidence supporting its theory, and I am unaware that BNSF has otherwise made any statement suggesting its willingness to pass any potential cost-savings through to Ameren. In my experience, any such representation or agreement by a Class I carrier would be extraordinary.

D. KJRY Does Not Substantiate its Position that the Lease Transaction will Otherwise Produce Public Benefits

Finally, I disagree with KJRY's representation that it will achieve other benefits, in particular with regard to other shippers on the Line. Once again, KJRY's arguments with respect to three potential shippers, Central Illinois Energy ("CIE"), Hitchcock Scrap Yard, Inc. ("Hitchcock"), and United Paving & Construction Co. ("United"), suffer from a decided lack of information about their past and/or future rail shipping needs. However, it appears that all three of these potential rail shippers currently have direct or transload access to two rail carriers: BNSF and KJRY. Essentially, the Lease Transaction will make these shippers captive to KJRY, eliminating any leverage that they might have previously enjoyed because of rail competition. Additionally, KJRY's admission that the costs of operations on the Line will be [ ] seriously undermines any suggestion that KJRY will offer viable rates to these shippers over the Leased Line. Presently, KJRY does not even serve them over its [ ] Thus, KJRY's assertion that the lease will bring other public benefits is highly dubious.

Finally, I note that the January / February 2007 edition of The Official Railway Guide shows that there are at least twenty Class III railroads operating in Illinois. It would seem plausible that at least one of these carriers has a cost-structure, equal to, or better than KJRY has, and could provide service over the Line that is at least as efficient as the service that KJRY promises to provide. At a minimum, service by a Class III railroad that is not affiliated with one of the incumbents would mitigate the direct competitive harm that the Lease Transaction will cause.

III. CONCLUSION

For the reasons discussed above, it is my considered opinion that the Lease Transaction is fundamentally anticompetitive and that it will result in the destruction of the existing, highly-competitive rail transportation market at Ameren's Duck Creek generation station. The destruction of competition will expose Ameren to abuse of market power and ultimately result in increased rail rates. Moreover, the Lease Transaction will not otherwise bring the public benefits predicted by KJRY, including efficient rail service to other potential shippers on the line.

CURRICULUM VITAE

Joseph J. Plaistow

Vice-President

L. E. Peabody & Associates, Inc.

Professional Experience:

Mr. Plaistow has more than thirty-four (34) years of experience in solving economic, operating, marketing and transportation problems. He focuses on litigation support and logistics. He provides expert testimony on transportation economics, rate structures and rate reasonableness determinations for private corporations. He has presented both oral and written testimony before both federal and state courts and regulatory agencies related to rail, motor carrier, and pipeline economic issues. Mr. Plaistow has provided expert testimony or analyses in the areas of economics and competitive analyses in the major railroad mergers. He has conducted several series of merger studies consisting of both offensive and defensive mergers.

Mr. Plaistow directed the re-engineering of the freight car management function for a major Canadian Railroad as part of their corporate-wide re-engineering effort. He provided economic analysis and expert testimony in antitrust proceedings and in the branch line abandonment/feeder line area. For a major United States chemical corporation, he was instrumental in re-engineering the rail portion of their distribution network. Mr. Plaistow has conducted rail contract and rate negotiations on behalf of major corporations.

Mr. Plaistow led the Amtrak Review advising the Secretary of Transportation regarding Amtrak's recommended route structure and its expected economic viability. For the Canadian government, Mr. Plaistow reviewed the comparative economics of transporting Powder River Basin coal to various destinations.

Mr. Plaistow has been responsible for marketing, railroad relations and overall direction for a fleet of rail equipment. He established accounting and computer communication relationships with the nation's major railroads as part of an overall effort to coordinate the management of refrigerated boxcar fleets. Optimization simulations were used to distribute freight cars efficiently from cost, speed, and return on investment standpoints.

Mr. Plaistow has been responsible for planning, budgeting, and customer service for a marketing unit of a major U.S. railroad. He served as interdepartmental liaison between Marketing and Operations on behalf of customers. Mr. Plaistow has negotiated bilateral agreements with all major railroads to coordinate the handling of each carrier's freight cars. He created management information systems supporting car purchase and repair decisions and customer service/cost reduction tradeoffs. Mr. Plaistow also designed and implemented a focus group based project to evaluate customers' needs and the railroad's response.

Mr. Plaistow has been responsible for the development of a corporate costing system and preparation of testimony in major coal rate proceedings. He revised the costing system to incorporate actual operating performance and appropriate capital costing procedures. He also testified in rate proceedings before the Surface Transportation Board, its predecessor the Interstate Commerce Commission and state commissions. Other assignments involved economic analyses of acquisitions and divestitures, which included pricing and selling railroads.

Previous Related Experience -- Mr. Plaistow has worked in the consulting industry since 1987. In addition to his current position as a Vice President of L. E. Peabody & Associates, Inc., Mr. Plaistow has been associated with Snavely King Majoros O'Connor & Lee, Inc., Fleet Management, Inc., Burlington Northern Railroad, and Pickands Mather & Co.

Education:

Mr. Plaistow received a MBA from the University of Minnesota and a BS in Metallurgical Engineering from the Michigan Technological University.

Professional Organizations:

Mr. Plaistow is a past president of the Washington Chapter of the Transportation Research, a registered practitioner before the Surface Transportation Board, a member of the Association of Transportation Law Professionals, and the American Society of Transportation and Logistics.

VERIFICATION

I, Joseph J. Plaistow, verify under penalty of perjury that the foregoing is true and correct based on my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this Verified Statement.

Joseph J. Plaistow

Joseph J. Plaistow
Vice-President
L. E. Peabody & Associates, Inc.

Dated: 1/5/07

EXHIBIT D

July 14, 2006

Mr. Michael G. Mueller
President
Ameren Energy Fuels & Services
1901 Chouteau Avenue, MC 611
St. Louis, Missouri 63103

Dear Mr. Mueller:

The BNSF Railway Company ("BNSF") and the Keokuk Junction Railway Co., d/b/a Peoria & Western Railway ("PWRY") are pleased to announce that effective August 15, 2006, PWRY will begin operation of a portion of BNSF's Yates City Subdivision between Vermont, Illinois and Farmington, Illinois.

PWRY is a member of the Pioneer Railcorp family of shortlines, that includes the Keokuk Junction Railway and several other shortlines. Information on Pioneer Railcorp may be found on its website at http://www.pioneer-railcorp.com.

PWRY is a handling carrier for BNSF, which means BNSF will continue to be able to set transportation prices from, to and via the PWRY whenever BNSF is in the route. As a handling carrier, PWRY will not appear in the pricing route when BNSF participates in a linehaul move, although the traffic will actually be physically interchanged between BNSF and PWRY at Vermont, Illinois.

Both BNSF and PWRY will work diligently to provide superior day-to-day solutions to your transportation needs. To make the transition easy for you, a brief "Who to Contact" sheet is enclosed.

If BNSF or PWRY can answer any questions, or help you in any way through this transition, please do not hesitate to let us know.

Yours truly,

Jerome M. Johnson

Jerome M. Johnson
Assistant Vice President Network Rationalization
The BNSF Railway Company

Yours truly,

J. Michael Carr

J. Michael Carr
President & Chief Financial Officer
Pioneer Industries Railway Corporation

Cc: Mr. Robert K. Neff, P.E., C.E.M.
Vice President Coal Supply & Transportation
Ameren Energy Fuels & Services
1901 Chouteau Avenue, MC 611
St. Louis, Missouri 63103

Cc: Mr. William B. McNally
Managing Executive Coal Supply & Emissions
Ameren Energy Fuels & Services
1901 Chouteau Avenue, MC 611
St. Louis, Missouri 63103

Mr. Glennon P. Hof
Manager Coal Operations
Ameren Energy Fuels & Services
1901 Chouteau Avenue, MC 611
St. Louis, Missouri 63103

Mr. Daniel J. Lidisky
Manager Coal Supply & Business Development
Ameren Energy Fuels & Services
1901 Chouteau Avenue, MC 611
St. Louis, Missouri 63103

Mr. Pete Rickershauser, Vice President Network Development
Mr. Sami Shalah, Vice President Coal Marketing - East, BNSF Railway
Mr. Larry Meyne, Director Coal Marketing, BNSF Railway

Who to Contact

Marketing information, including transportation prices:

When BNSF is in the route: Contact BNSF.
BNSF's public prices may be found on BNSF's web site at www.bnsf.com. You may also contact your local BNSF marketing representative. Coal shippers or receivers may contact Larry Meyne, Director Coal Marketing at (817) 867-6244, while Ethanol shippers or receivers may contact Bob Kelly, Director Bulk Foods at (817) 867-6340 or Angela Caddell, Manager Ethanol & Ag Products at (817) 867-6035.

When BNSF is not in the route: Contact PWRY.

Catherine Busch, Director Marketing, who may be reached at her office (309) 697-1400 or through email at cbusch@pioneer-railcorp.com.

Car orders and car order forecasts:

Contact PWRY for all car orders and car order forecasts contact Kathy Bouris at (800)914-7851.

When BNSF is in the route, PWRY will enter the orders into BNSF's Equipment Distribution System ("ED"). When BNSF is not in the route, PWRY will furnish PWRY equipment, or contact the appropriate Class I carrier. This will ensure your car orders are efficiently filled without any duplicate orders, and local operations people will apply the correct equipment to the correct customer order.

Notification of release of all loaded and empty cars:

Provide PWRY with paper documentation for all loaded and empty releases. On outbound loads, the following information will be required: car initial and number; destination city and carrier. Please fax all release information to PWRY at (800) 914-7853.

Submitting bills of lading:

Until further notice, all waybill routes will remain as they are today. If you are an existing PWRY customer today and you currently provide PWRY bill of lading information, please continue that practice. If you are new PWRY customer, all waybills will continue to be routed to BNSF via EDI or other means as you do today.

SPECIAL NOTE: PWRY is being certified by the AAR Interline Settlement System. When certification is complete, PWRY will notify the new PWRY customers to begin routing PWRY traffic, where BNSF is not in the route, via PWRY or PWRY-Connections.

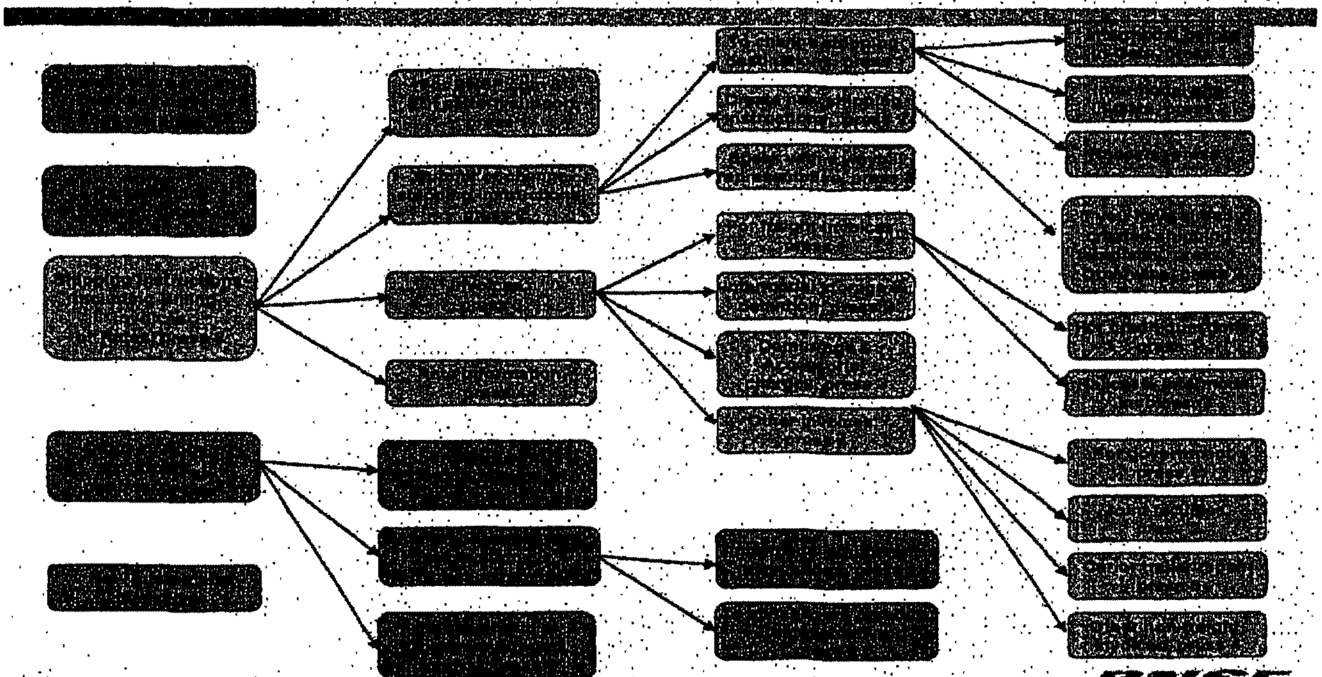
Traffic-monitoring, car tracing, expediting cars, reports or problem resolution:

When cars are on BNSF: Use BNSF's web site tools at www.bnsf.com or contact BNSF's customer solutions group at 1-888-428-2673. Options are shown at the attached schematic.

When cars are on PWRY: Contact PWRY's customer service center at (800) 914-7851.

888-428-2673
BNSF Railway Menu*
(as of 7/10/06)

Shortcut: After the "your call may be monitored or recorded" statement you may press multiple menu options immediately. For example: to speak to a waybill representative, press 3, 2, 3.



BNSF RAILWAY

*menu subject to change

CERTIFICATE OF SERVICE

This is to certify that on this 8th day of January 2007 I caused the foregoing Reply to Keokuk Junction Railway Co.'s Petition for Exemption in the Finance Docket No. 34974 to be served upon counsel for all known parties of record by first class mail, postage prepaid, or by more expeditious means.

Sandra L. Brown